

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2628

RIN 1212-AA78

Annual Financial and Actuarial Information Reporting

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation is proposing regulations to implement a new requirement under section 4010 of the Employee Retirement Income Security Act of 1974. Section 4010 requires controlled groups maintaining plans with large amounts of underfunding to submit annually to the PBGC financial and actuarial information as prescribed by the PBGC.

DATES: Comments must be received on or before September 5, 1995.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or hand-delivered to Suite 340 at the above address. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005-4026.

FOR FURTHER INFORMATION CONTACT: Frank H. McCulloch, Senior Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4116 (202-326-4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Background

Section 772(a) of the Retirement Protection Act of 1994 (subtitle F of title VII of the Uruguay Round Agreements Act, Pub. L. 103-465, 108 Stat. 4809 (1994)) added section 4010 to ERISA. Under section 4010, certain contributing sponsors and all members of their controlled groups must submit annually to the PBGC financial and actuarial information as prescribed by the PBGC in regulations.

Who Must File

Under section 4010 of ERISA, each contributing sponsor of a pension plan and each member of its controlled group is obligated to submit information to the PBGC if (1) the aggregate unfunded vested benefits of all plans maintained by the members of the controlled group exceed \$50 million; (2) the conditions specified in section 302(f) of ERISA and

section 412(n) of the Internal Revenue Code for imposing a lien for missed contributions exceeding \$1 million have been met with respect to any plan maintained by any member of the controlled group; or (3) the Internal Revenue Service has granted minimum funding waivers in excess of \$1 million to any plan maintained by any member of the controlled group, and any portion of the waivers is still outstanding. The regulation defines each entity obligated to submit information to the PBGC as a "Filer" (§ 2628.4).

"Unfunded vested benefits" for the \$50 million test are determined in the same manner used to determine unfunded vested benefits for purposes of calculating the PBGC's variable rate premium (but without reference to the exemptions or special rules provided in the PBGC's premium regulation (29 CFR 2610.24)).

Information Years

The regulation introduces the concept of an Information Year for a person (§ 2628.6). The Information Year serves four purposes. First, it will help persons determine which plan years and fiscal years to use to identify Filers. Second, it will help Filers determine whether a pension plan qualifies for a filing exemption. Third, it is used to identify the information to be submitted by a Filer. Fourth, it establishes the due date for submission of required information by a Filer.

The regulation does not require a Filer to change its fiscal year or the plan year of any pension plan. Further, the regulation does not require a Filer to report financial information on any accounting period other than an existing fiscal year or to report actuarial information for any period other than the existing plan year of a pension plan.

Generally, the Information Year is the fiscal year of the Filer. If all members of a controlled group do not report financial information on the same fiscal year, the Information Year is the calendar year.

Required Submissions

Section 4010(a) of ERISA requires each Filer annually to provide to the PBGC audited financial statements and other financial and actuarial information required by regulation. Section 2628.3(b) of the regulation allows information to be submitted by a representative of a Filer so that, for example, a Filer can submit required information to the PBGC on behalf of itself and all other members of its controlled group and satisfy their obligations under the regulation.

Exemptions

A Filer is not required to submit actuarial information for a pension plan ("Exempt Plan") if, at the end of the plan year ending within the Filer's Information Year, the plan has no unfunded benefit liabilities or has fewer than 500 participants. The amount of "unfunded benefit liabilities" is determined as of the end of that plan year by subtracting the market value of plan assets, without regard to any contributions receivable, from the value of the plan's benefit liabilities. The regulation requires that the "value of benefit liabilities" be calculated as of the end of that plan year using (1) the PBGC's termination assumptions in effect at the end of that plan year and (2) plan census data as of the end of that plan year or the beginning of the next plan year. If that census data is not available, the value of benefit liabilities may be based on a projection of census data from a date within the plan year. This projection must be consistent with projections used to measure pension obligations for financial statement purposes and produce a result appropriate to the measurement date for these obligations. Adjustments to this projection process may be required where there have been significant events (such as plan amendments or curtailments) which were not reflected in the projection assumptions. Plans that have minimum funding waivers outstanding at the end of the plan year ending within the Filer's Information Year or that have any missed minimum funding payments in any amount that were required to be made during the Information Year are not Exempt Plans.

Section 2628.4(b) requires that all single-employer plans covered by Title IV of ERISA in a controlled group, including Exempt Plans, be taken into account in determining whether a person is a Filer. For example, a contributing sponsor has two plans—Plan A with unfunded vested benefits of \$45 million and more than 500 participants, and Plan B with unfunded vested benefits of \$6 million and fewer than 500 participants. Because the aggregate unfunded vested benefits of the two plans will exceed \$50 million, the contributing sponsor and each of its controlled group members are Filers. (Because Plan B has fewer than 500 participants, no actuarial information for the plan need be submitted.)

The PBGC also may waive some or all of the filing requirements for Filers in appropriate cases where the PBGC finds convincing evidence for such a waiver (§ 2628.5(b)). Waivers may be conditioned on the submission of

substitute information or the execution of an agreement protective of plan participants and the PBGC. A Filer that seeks a waiver must file its request in writing no less than fifteen days before the applicable due date for required information.

The PBGC invites members of the public to express their views concerning other factors or criteria that could warrant additional exemptions for individual Filers, for classes of Filers, or for plans.

Information To Be Submitted

Section 2628.7 describes the information that Filers must submit to the PBGC. Although each Filer is subject to the obligation to submit information on each controlled group member and plan (to the extent no exemptions apply), the regulation allows for a single consolidated filing for the controlled group.

Identifying Information

Section 2628.7(b) specifies identifying information for each Filer (the Filer's name, address, telephone number, and the Employer Identification Number (EIN), if any, assigned by the IRS) and for each pension plan (the name of the plan, EIN, and the Plan Number assigned by the plan's contributing sponsor). Also, each Filer (or one Filer for the entire controlled group) must identify all members of the controlled group and the legal relationship of each entity to the others (parent, wholly-owned subsidiary, etc.).

Actuarial Information

Section 2628.7(c) specifies the actuarial information that a Filer must provide as follows: (1) The market value of plan assets (without regard to any contributions receivable) at the end of the plan year ending within the Filer's Information Year, (2) the value of benefit liabilities as of the same date, (3) certain participant data, and (4) the actuarial valuation report ("AVR") for that plan year, which must contain or be supplemented by certain required actuarial information. Generally, this actuarial information is developed and maintained by the plan's enrolled actuary for purposes of, among other things, completing Schedule B of the plan's Form 5500. A plan's enrolled actuary must certify that all actuarial information submitted is accurate and complete.

If the AVR or any of the supplementary actuarial information is not available by the due date, § 2628.7(d) allows a Filer to submit the unavailable information by an alternative date—15 days after the

deadline for filing the plan's Form 5500 for the plan year ending within the Filer's Information Year (see 29 CFR 2520.104a-5(a)(2)).

Financial Information

Section 4010(a)(2) of ERISA requires each Filer to provide to the PBGC copies of audited financial statements (or, if not available, unaudited statements). Financial statements include balance sheets, income statements and cash flow statements. Under § 2628.7(e)(1)(iii), if audited or unaudited financial statements are not prepared, the Filer may satisfy the financial information requirement by submitting copies of federal tax returns for the tax year ending within its Information Year.

For most controlled group members whose financial information is combined with that of other group members, the submission of the consolidated financial statement for the group will satisfy the obligation to submit individual financial statements (§ 2628.7(e)(2)(i)). Limited financial information—a group member's revenues and operating income for the Information Year, and its assets as of the end of the Information Year—is required for each contributing sponsor of a non-Exempt Plan included in such a consolidated financial statement (§ 2628.7(e)(2)(ii)).

If the required financial information of a controlled group member has been filed with the Securities and Exchange Commission, or has otherwise been made publicly available, the Filer need not submit it to PBGC. Section 2628.7(e)(3) requires only that the Filer include a statement in its submission to the PBGC indicating when the information was made available to the public and where the PBGC may obtain it.

The PBGC may request additional information from any Filer to determine plan assets and liabilities and a Filer's financial status (§ 2628.7(f)). For example, after a controlled group's parent submits consolidated financial statements in accordance with § 2628.7(e)(2)(i), it proposes to sell one of its subsidiaries. In that instance, the PBGC would normally request financial information relating to the subsidiary that was to be sold. Nothing in this proposed regulation limits the PBGC's authority under section 4003 of ERISA to seek any information from a Filer by any means provided thereunder.

Previously Provided Information

Any information previously submitted to the PBGC need not be resubmitted. Section 2628.7(g) allows the Filer to incorporate the previous

submission by reference. For example, some of the required actuarial information with respect to a Filer's plans may have already been submitted to the PBGC in a reportable event filing; the Filer can make a reference to the reportable event filing in its submission.

When To File

Under § 2628.8(a), a Filer must submit the required information to the PBGC on or before the one hundred and fifth day after the end of the Filer's Information Year. (This due date is designed to be fifteen days after the Securities and Exchange Commission's annual reporting date for public companies.) If a plan's AVR or any of the related supplementary actuarial information is not available by this due date, the Filer may submit the unavailable information by the alternative due date—15 days after the deadline for filing the plan's Form 5500 for the plan year ending within the Filer's Information Year (§ 2628.8(b)).

Filers may submit required information by mail, by overnight and express delivery services, by hand, or by other means that are acceptable to the PBGC. The PBGC invites Filers to offer suggestions regarding procedures to electronically transmit some or all of the required information.

Confidentiality

Generally, required information submitted to the PBGC by a Filer in accordance with this regulation will not be made available or disclosed to the public. This restriction on disclosure shall not apply to publicly available information. For example, if a Filer submits required information to the PBGC, part of which is also publicly available, only that information that is not publicly available will be subject to confidentiality. Further, as provided in section 4010(c) of ERISA, these confidentiality strictures shall not apply to information disclosed by the PBGC in administrative or judicial proceedings or to Congress.

Penalties for Non-Compliance

Failure to provide information to the PBGC in accordance with the requirements of this part would constitute a violation of Title IV of ERISA. Section 4071 authorizes the PBGC to assess a penalty against any person who fails, within the specified time limits, to provide material information to the PBGC. All required information under this regulation is deemed material by the PBGC. The PBGC may assess a penalty on a pension plan's contributing sponsor and on each member of its controlled group of up to

\$1,000 for each day for which a failure to submit required information continues. The PBGC has the right to pursue other equitable or legal remedies available to it under the law.

Effective Date

The regulation applies for Information Years ending on or after December 31, 1995.

Paperwork Reduction Act

The PBGC has submitted the collection of information requirements in this proposed regulation to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. chapter 35). The PBGC needs this information, and will use it, to identify controlled groups with severely underfunded plans, to determine the financial status of controlled group members and evaluate the potential risk of future losses resulting from corporate transactions and the need to take legal action, and to negotiate agreements under which controlled groups would provide additional plan funding. The PBGC estimates the public reporting burden for this collection of information to average 215.3 hours for each of approximately 100 controlled groups.

Comments concerning this collection of information should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: PBGC Desk Officer.

E.O. 12866 and Regulatory Flexibility Act

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866. The provisions of this proposed regulation would implement policy decisions made by Congress in requiring Filers to provide audited financial statements and other required information annually to the PBGC. Those provisions reflect the PBGC's interpretation of the statutory standards and prescribe the form, time, and manner in which the required information should be submitted.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that, if adopted, this proposed regulation would not have a significant economic impact on a substantial number of small entities. The tests for identifying Filers under section 4010(b) of ERISA limit the filing requirements to large companies and their controlled groups. With respect to many of those groups, the PBGC will obtain audited financial statements from public sources

(such as the Securities and Exchange Commission), rather than require each of the companies to file the information with the PBGC. Further, the proposed regulation will exempt plans with fewer than 500 participants from the actuarial information requirements. The regulation would not require individual financial information with respect to many of the companies within controlled groups. In addition, the PBGC intends to develop the means to allow Filers to submit required information electronically. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), sections 603 and 604 do not apply.

List of Subjects in 29 CFR Part 2628

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC proposes to amend subchapter C, chapter XXVI of 29 CFR by adding a new part 2628 to read as follows:

PART 2628—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

- 2628.1 Purpose and scope.
- 2628.2 Definitions.
- 2628.3 Required submission of information.
- 2628.4 Filers.
- 2628.5 Exemptions.
- 2628.6 Information Year.
- 2628.7 Required information.
- 2628.8 Due date and filing with the PBGC.
- 2628.9 Date of filing.
- 2628.10 Confidentiality of information submitted.

Authority: 29 U.S.C. 1302(b)(3); 29 U.S.C. 1310

§ 2628.1 Purpose and scope.

(a) *Purpose.* This part prescribes the procedures and the information that Filers (as described in § 2628.4(a) of this part) must submit annually to the PBGC under section 4010 of the Act.

(b) *Scope.* This part applies to Filers for any Information Year ending on or after December 31, 1995.

§ 2628.2 Definitions.

For purposes of this part—

Act means the Employee Retirement Income Security Act of 1974, as amended.

Code means the Internal Revenue Code of 1986, as amended.

Contributing sponsor means a person who is a contributing sponsor as defined in section 4001(a)(13) of the Act.

Controlled group means, in connection with any person, a group consisting of that person and all other persons under common control with

such person, determined under part 2612 of this chapter.

Information Year means the year determined under § 2628.6 of this part.

Exempt Plan means a plan as described in § 2628.5(a) of this part.

Filer means a person who is a Filer as described in § 2628.4 of this part.

Fiscal year means, with respect to a person, the annual accounting period or, if the person has not adopted a closing date, a calendar year (*i.e.*, the year ending on December 31).

Person means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization representing any group of participants for purposes of collective bargaining.

Plan means a single-employer plan (as defined in section 4001(a)(15) of the Act) that is covered by section 4021(a) and not excluded under section 4021(b) of the Act.

Plan year means the calendar, policy, or fiscal year on which the records of a Plan are kept.

Unfunded vested benefits means the amount determined under section 4006(a)(3)(E)(iii) of the Act and § 2610.23 of this chapter (without reference to § 2610.24 of this chapter).

Value of benefit liabilities means the value of a Plan's benefit liabilities (as defined in section 4001(a)(16) of the Act), as of the end of the plan year ending within the Filer's Information Year, using:

- (1) The PBGC's valuation assumptions for trusted plans terminating as of the end of that plan year, as prescribed in 29 CFR part 2619, subpart C, and
- (2) Plan census data as of the end of that plan year or the beginning of the next plan year.

If such census data are not available, a projection of plan census data from a date within the plan year must be used. The projection must be consistent with projections used to measure pension obligations of the Plan for financial statement purposes and must give a result appropriate to the measurement date for these obligations. Thus, for example, adjustments to the projection process may be required where there has been a significant event (e.g., a plan amendment or a curtailment) which has not been reflected in the projection assumptions.

§ 2628.3 Required submission of information.

(a) *General requirement.* Except as provided in § 2628.5, each person who is a Filer as described in § 2628.4(a) shall submit to the PBGC annually on or

before the date specified in § 2628.8(a) all information specified in § 2628.7 of this part.

(b) *Submission by representative.* One or more Filers or other persons may act as a representative and submit the information specified in § 2628.7 on behalf of some or all Filers within a controlled group. Representatives, other than Filers, must also submit a written power of attorney signed by the Filer authorizing the representative to act on the Filer's behalf in connection with the required information.

§ 2628.4 Filers.

(a) *General.* A Filer is a contributing sponsor of a Plan and each member of the contributing sponsor's controlled group if, for an Information Year,

(1) The aggregate unfunded vested benefits of all Plans maintained by the contributing sponsor and other members of the contributing sponsor's controlled group exceed \$50 million (disregarding those Plans with no unfunded vested benefits) at the end of the plan year or years ending within the Filer's Information Year;

(2) The conditions for imposition of a lien described in section 302(f)(1) (A) and (B) of the Act or section 412(n)(1) (A) and (B) of the Code have been met during the plan year ending within the Filer's Information Year with respect to any Plan maintained by the contributing sponsor or any member of its controlled group; or

(3) The Internal Revenue Service has granted a waiver or waivers of the minimum funding standards, as defined in section 303 of the Act and section 412(d) of the Code, in excess of \$1 million with respect to any Plan maintained by the contributing sponsor or any member of its controlled group, and any portion thereof is still outstanding at the end of the plan year ending within the Filer's Information Year.

(b) All Plans, including any Exempt Plan as described in § 2628.5(a), maintained by members of a controlled group must be taken into account in determining the persons who are Filers under this section.

§ 2628.5 Exemptions.

(a) *Exempt Plan.* The actuarial information specified in § 2628.7(c) of this part is not required for a Plan (an "Exempt Plan") that—

(1) Has no minimum funding waivers outstanding at the end of the plan year ending within the Filer's Information Year,

(2) Has received all payments required to be made during the Information Year under section 302 of

the Act and Section 412 of the Code, and

(3) Satisfies at least one of the following conditions—

(i) The Plan has no unfunded benefit liabilities, determined using the market value of assets in the Plan (without regard to any contributions receivable) at the end of the plan year ending within the Filer's Information Year and the value of benefit liabilities; or

(ii) The Plan has fewer than 500 participants as of the end of the plan year ending within the Filer's Information Year.

(b) *Waiver of information requirements.* The PBGC may waive the requirement to submit required information with respect to a Filer, a Plan, or groups thereof. The PBGC will exercise this discretion in appropriate cases where it finds convincing evidence for such a waiver, and any such waiver may be subject to conditions. A request for a waiver must be filed in writing with the PBGC at the address provided in § 2628.8(d) no later than fifteen days prior to the applicable date specified in § 2628.8 of this part, and must state the facts and circumstances on which the request is based.

§ 2628.6 Information Year.

(a) *Determinations based on Information Year.* An Information Year is used under this part to determine which fiscal year and plan year should be used to determine whether members of a controlled group are Filers (§ 2628.4) and whether a Plan is an Exempt Plan (§ 2628.5(a)), and to identify the information that a Filer must submit (§ 2628.7) and the due date for submitting that information (§ 2628.8(a)). A Filer is not required to change its fiscal year or the plan year of a Plan, to report financial information on any accounting period other than an existing fiscal year, or to report actuarial information for any plan year other than the existing plan year of a Plan.

(b) *General.* Except as provided in paragraph (c) of this section, the Information Year shall be the fiscal year of the Filer or the consolidated fiscal year of the Filer's controlled group.

(c) *Controlled groups with different fiscal years.* If members of a controlled group report financial information for different fiscal years, the Information Year shall be the calendar year. Example: Filers A and B are members of the same controlled group. Filer A has a July 1 fiscal year, and Filer B has an October 1 fiscal year. The Information Year is the calendar year. Filer A's financial information with respect to its fiscal year beginning July 1, 1995, and

Filer B's financial information with respect to its fiscal year beginning October 1, 1995, must be submitted to the PBGC following the end of the 1996 calendar year (the calendar year in which those fiscal years end).

§ 2628.7 Required information.

(a) *General.* Except as otherwise provided in § 2628.5 of this part, the information to be submitted by a Filer is that specified in paragraphs (b), (c), and (e) of this section with respect to each member of the Filer's controlled group and each Plan maintained by any member of the controlled group.

(b) *Identifying information.* (1) The name, address, and telephone number of the Filer.

(2) The nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to the Filer (if there is no EIN, explain).

(3) If the Filer is a contributing sponsor of a Plan or Plans—

(i) The name of each Plan.

(ii) The EIN and the three-digit Plan Number (PN) assigned by the contributing sponsor to each Plan, but—

(A) If the EIN-PN has changed since the beginning of the Information Year, the previous EIN-PN and an explanation; or

(B) If there is no EIN-PN for the Plan, an explanation.

(4) The name and address of each other member of the Filer's controlled group and the legal relationships of each (for example, parent, subsidiary).

(c) *Plan actuarial information.* (1) The market value of Plan assets (determined without regard to any contributions receivable) at the end of the plan year ending within the Filer's Information Year.

(2) The value of benefit liabilities.

(3) Schedules or listings with the following information as of the first day of the plan year ending within the Filer's Information Year:

(i) The distribution of active participants by 5-year age and service groupings and, if benefits are based (in whole or in part) on compensation, each grouping's average compensation;

(ii) The distribution of retirees by 5-year age groupings with each grouping's average benefit amounts; and

(iii) The distribution of deferred vested participants by 5-year age groupings with each grouping's average benefit amount to be paid at normal retirement age.

(4) A copy of the actuarial valuation report for the plan year ending within the Filer's Information Year that contains or is supplemented by the following information:

(i) Each amortization base and related amortization charge or credit to the

funding standard account (as defined in section 302(b) of the Act and section 412(b) of the Code) for that plan year (excluding the amount considered contributed to the Plan as described in section 302(b)(3)(A) of the Act and section 412(b)(3)(A) of the Code);

(ii) The itemized development of the additional funding charge payable for that plan year pursuant to section 412(l) of the Code;

(iii) The minimum funding contribution and the maximum deductible contribution for that plan year;

(iv) The actuarial assumptions and actuarial methods used for that plan year for purposes of section 302(b) and (d) of the Act and section 412(b) and (l) of the Code (and any change in those assumptions and methods since the previous valuation and justifications for any change); and

(v) A summary of the principal eligibility and benefit provisions on which the valuation of the Plan was based (and any change(s) to those provisions since the previous valuation), along with descriptions of any benefits not included in the valuation, any significant events that occurred during that plan year, and the Plan's early retirement factors.

(5) A written certification by the Plan's enrolled actuary that, to the best of his or her knowledge and belief, the actuarial information submitted is true, correct, and complete and conforms to all applicable laws and regulations.

(d) *Alternative compliance for plan actuarial information.* If any of the information specified in paragraph (c)(4) of this section is not available by the date specified in § 2628.8(a) of this part, a Filer may satisfy the requirement to provide such information by—

(1) Including a statement, with the material that is submitted to the PBGC, that the Filer will file the unavailable information by the alternative due date specified in § 2628.8(b), and

(2) Filing such information and a certification by the Plan's enrolled actuary as described in paragraph (c)(5) of this section with the PBGC by that alternative due date.

(e) *Financial information.* (1) Except as provided in paragraph (e)(2) of this section, required financial information for each controlled group member consists of—

(i) Audited financial statements for the fiscal year ending within the Information Year (including balance sheets, income statements, cash flow statements, and notes to the financial statements); or

(ii) If no audited financial statements are prepared, unaudited financial

statements for the fiscal year ending within the Information Year; or

(iii) If neither audited nor unaudited financial statements are prepared, copies of federal tax returns for the tax year ending within the Information Year.

(2) If the financial information of a controlled group member is combined with the information of other group members in a consolidated financial statement, required financial information consists of—

(i) The consolidated, audited (or, if unavailable, unaudited) financial statement for the Information Year; and

(ii) For each controlled group member included in such consolidated financial statement that is a contributing sponsor of a Plan that is not an Exempt Plan, the contributing sponsor's revenues and operating income for the Information Year, and assets as of the end of the Information Year.

(3) If any of the financial information required by paragraphs (e)(1) or (e)(2) of this section is publicly available (for example, the controlled group member has filed audited financial statements with the Securities and Exchange Commission), the Filer, in lieu of submitting such information to the PBGC, may include a statement with the other information that is submitted to the PBGC indicating when such financial information was made available to the public and where the PBGC may obtain it.

(f) *Additional information.* The PBGC may, by written notification, require any Filer to submit additional actuarial or financial information that is necessary to determine Plan assets and liabilities or the financial status of a Filer. Such information must be submitted within 10 days after the date of the written notification or by a different time specified therein.

(g) *Previous submissions.* If any required information has been previously submitted to the PBGC, a Filer may incorporate such information into the required submission by referring to the previous submission.

(h) *Penalties for non-compliance.* If all of the information required under this section is not provided within the specified time limit, the PBGC may assess a separate penalty under section 4071 of the Act against the Filer and each member of the Filer's controlled group of up to \$1,000 a day for each day that the failure continues. The PBGC may also pursue other equitable or legal remedies available to it under the law.

§ 2628.8 Due date and filing with the PBGC.

(a) *Due date.* Except as permitted under paragraph (b) of this section, a Filer shall file the information required under this part with the PBGC on or before the 105th day after the close of the Filer's Information Year.

(b) *Alternative due date.* A Filer that includes the statement specified in § 2628.7(d)(1) with its submission to the PBGC by the date specified in paragraph (a) of this section must submit the actuarial information specified in § 2628.7(d)(2) within 15 days after the deadline for filing the Plan's annual report for the plan year ending within the Filer's Information Year (see § 2520.104a-5(a)(2) of this title).

(c) *Extensions.* When the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the PBGC may extend the due dates provided under paragraphs (a) and (b) of this section by up to 180 days.

(d) *How to file.* Requests and information may be delivered by mail, by overnight and express delivery services, by hand, or by any other method acceptable to the PBGC, to: Corporate Finance and Negotiations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026.

§ 2628.9 Date of filing.

(a) Information filed under this part is considered filed on the date of the United States postmark stamped on the cover in which the information is mailed, if—

(1) The postmark was made by the United States Postal Service; and

(2) The document was mailed postage prepaid, properly addressed to the PBGC.

(b) If the Filer sends or transmits the information to the PBGC by means other than the United States Postal Service, the information is considered filed on the date it is received by the PBGC. Information received on a weekend or Federal holiday or after 5 p.m. on a weekday is considered filed on the next regular business day.

(c) In computing any period of time under this part, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a weekend or Federal holiday, in which event the period runs until the end of the next day that is not a weekend or Federal holiday.

§ 2628.10 Confidentiality of information submitted.

In accordance with § 2603.15(b) of this chapter and section 4010(c) of the Act, any information or documentary material that is not publicly available and is submitted to the PBGC pursuant

to this part shall not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

Issued in Washington, DC this 30th day of June, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

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